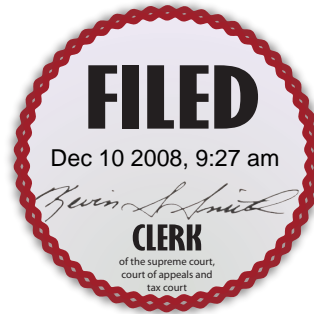


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

MICHAEL R. BOHN
Franklin, Indiana

ATTORNEY FOR APPELLEE:

ELIZABETH A. GAMBOA
Department of Child Services,
Franklin, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT CHILD RELATIONSHIP OF)
Ja.H., Ja.H., Jo. H.,)

GLORIA CLARK,)

Appellant-Plaintiff,)

vs.)

JOHNSON COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Defendant.)

No. 41A01-0809-JV-411

APPEAL FROM THE JOHNSON CIRCUIT COURT
The Honorable K. Mark Loyd Judge
Cause Nos. 41C01-0710-JT-15, 16 & 17

December 10, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Gloria Clark appeals the termination of her parental rights. We affirm.

Issue

Clark raises one issue, which we restate as whether there is sufficient evidence to support the termination of her parental rights.

Facts

Clark is the mother of three children who were determined to be children in need of services (“CHINS”) when she did not pick the two older children up from school and could not be immediately located. As part of the CHINS proceedings, Clark was required to maintain suitable housing, support her children, and complete a variety of services provided by the Johnson County Department of Child Services (“DCS”). On October 1, 2007, the DCS filed a petition to terminate Clark’s parental rights.

At the time of the February 6, 2008 fact-finding hearing, Clark had complied with some of the DCS’s requirements, but had not successfully completed all of the requirements. A second fact-finding hearing was conducted February 20, 2008. Although Clark was represented by counsel at both hearings, she was not present at either hearing and no explanation for her absence was provided. On April 17, 2008, the trial court issued an order terminating Clark’s parental rights. Clark now appeals.

Analysis

“When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility.” Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). “We consider only the evidence and

reasonable inferences that are most favorable to the judgment.” Id. Where a trial court enters findings and conclusions granting a petition to terminate parental rights, we apply a two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then we determine whether the findings support the judgment. Id. We will set aside a judgment that is clearly erroneous. Id. A judgment is clearly erroneous when the findings do not support the trial court’s conclusions or the conclusions do not support the judgment. Id.

A petition to terminate the parent-child relationship must allege:

(A) one (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court’s finding, the date of the finding, and the manner in which the finding was made; or
- (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

- (i) the conditions that resulted in the child’s removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2).

The DCS had the burden of proving these allegations by clear and convincing evidence. See Bester, 839 N.E.2d at 148. Clear and convincing evidence need not show that the continued custody of the parent is wholly inadequate for the child's very survival. Id. Instead, it is sufficient to show by clear and convincing evidence that the child's emotional and physical development is threatened by the parent's custody. Id.

Clark argues that the DCS did not establish by clear and convincing evidence a reasonable probability that the conditions resulting in the children's removal from her home would not be remedied. Clark contends that the children were removed from her custody because of her substance abuse problem and "since there is no evidence that she has not been successful with her sobriety, DCS did not prove the statutory requirements by clear and convincing evidence." Appellant's Br. p. 10.

We disagree. The children were removed from Clark's custody because she did not pick them up from school and could not be located. Her failure to pick them up from school has been attributed to her drug abuse. Clark was admittedly using alcohol and cocaine as late as August 2007. Although after repeated failures at completing a drug rehabilitation program, Clark was eventually able to complete a substance abuse program. In October 2007, she refused a drug screen after the completion of that program and did not provide the DCS with any information regarding follow-up drug abuse treatment such as participation in a twelve-step program. Further, the DCS case

manager testified that Clark has given no indication that she is able to maintain her sobriety. Completion of a substance abuse program is not the same as successfully maintaining her sobriety.

Moreover, Clark failed to reliably and consistently participate in visitations and counseling with the children as late as December 2007 and January 2008. Further, the case manager testified that she had not been able to locate Clark since December 2007. Finally, without explanation, Clark did not attend either of the fact-finding hearings. This evidence shows that Clark is not willing to be a presence in the lives of her children or available to meet their needs—the condition that resulted in the children’s removal from her custody.

The DCS presented clear and convincing evidence that there is a reasonable probability that the conditions resulting in the children’s removal would not be remedied. There is sufficient evidence to support the termination of Clark’s parental rights.

Conclusion

There is sufficient evidence to support the termination of Clark’s parental rights.
We affirm.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.